"Q. You are an old resident of Tipton County?

"A. Yes, sir; I—been there quite a little while.

"Q. And you have surveyed this portion of Tipton County in the territory of Island 37, many times, you say. I will ask you whether it is or is not a fact that it was a matter of common knowledge and a part of the history of Tipton County, that the Trigg tract—the John Trigg tract—just before the cut-off, consisted of some 1,300 acres of land, and that the change made by the cut-off in the Mississippi River took away 1,000 acres of that Trigg tract?

"A. Yes, sir.

"Q. You have seen the Burke survey, have you not?

"A. Yes.

"Q. That shows the cut-off went right through the Trigg tract and left toward the southeast corner of the tract about 33 or 34 acres?

"A. Yes, sir.

"Q. And over on the Centennial Island side, about a mile apart, 305 acres of this Trigg tract?

"A. Yes.

"Q. Between the two pieces the cut-off took away 1,000 acres?

"A. Yes, sir.

"Q. According to this Chart 18, I will ask you to state whether it is a fact that the channel of commerce of the river, which is supposed to be indicated by that red line as it existed prior to 1876, is actually made to run over land which was actually there and in cultivation at the time of the cut-off?

"A. Yes, sir." (Rec. pp. 385 and 386).

It should be borne in mind that what was first designated as the tentative boundary was the only one surveyed, and is exactly the line recommended by the Commission and run by courses and distances on Exhibit B, page 505, and ran the same line in red on maps shown at pages 508 and 513. The longitude shown on these maps being of the portion of the boundary line of what is now Centennial Island, being the same as Exhibit B to Commissioner's report (Rec. p. 510). The same facts which Mr. Green's maps so clearly show, in the light of his testimony, are also shown by tracing that portion of the boundary line in its correct position with reference to longitude on the government survey Sheet No. 7, Exhibit A to Bentley's deposition, page 12 of Supplemental Report and proving that said line ran across the main body of the Trigg tract, which is the east one thousand acres of the Huddleston grant, shown on said map. This fact is also shown by the rather crude map of Mr. McSpadden (Rec. p. 507). It represents by a heavy green line "JJ" the boundary line agreed on by the Commission and shows

that the same passes through the main body of the John Trigg twelve hundred acres, the testimony showing that these two hundred acres had been added by accretion to the one-thousand-acre tract.

Mr. McSpadden, while not a surveyor, had acquired very accurate knowledge of this territory, both from observation and from familiarity with the maps and other records bearing thereon. He had made a special study of the river and its changes of course in this territory. We quote from his testimony:

> "Q. Are you convinced from all of your examination of the maps and records and other information which you received and what you saw after the cut-off that the Trigg tract of land to the extent of 1,200 acres was there just before the cut-off?
>
> "A. Yes, sir; that was the universal understanding in the country. That cut-off had created a great impression on everybody's mind, and it was a common topic of conversation, and it made a particular impression on me. Here is a matter that I called your attention to the other day—that line there, which is the northeast line of the Huddleston tract, that is, the 35 chains, called runs in a direct line to the southeast corner of Island 37, as it was left immediately after the cut-off, and is the same as now shown on the Humphreys map; that is to say, if the line of that 35 chains call was continued on straight, it would strike

the southeast corner of Island 37, as it was left after the cut-off and as it is now shown on the Humphreys map. That 35 chains line is the northeast line of the Huddleston tract and was the only part of the Huddleston tract that fronted on the main Mississippi River at the time of the original survey of the tract in 1823. The rest of the Huddleston tract that touched the river fronted on the chute between that tract and Island 37. Now that being true, it was absolutely impossible for any material caving to have taken place on the northeast boundary of the Huddleston tract or on the east boundary of the Huddleston tract. In the first place, there was no hydraulic force to make it wash away there; and if the Huddleston grant had washed away, the river at that place would have come much further west and of course would have struck directly against Island 37, considerably west of the point that now remains there and it would have washed it away. The location of the southeast point of Island 37, as it now remains, and as shown on the Humphreys map, makes it plain that there had been no material alterations in the location of the river and no material washing away of the northeast and east portion of the Huddleston tract, before the cut-off; because if there had been any material washing of the river in those places and any material change in the course of the river, then the southeast point of Island 37 could not possibly have been there and would not be there at the pres-

ent time. Its existence in my judgment is complete proof that there had been no material caving away before the cut-off. Of course the southeast corner of Island 37 has not changed since the cut-off." (Rec. pp. 217-218.)

And further:

"Q. Did you make this rough sketch?

"A. Yes.

"Q. Was it made from grants that you had inspected and also from knowledge which you acquired as to the physical conditions there just prior to the cut-off?

"A. It was made from the Humphreys map and from the records. It is possibly a copy of the Humphreys map with the application of the testimony of different parties to the situation.

"Q. Does this yellow portion of the map show the Trigg tract of land as you understood and believed existed prior to the cut-off?

"A. That shows the Trigg tract of land as laid down by the Humphreys survey. I never heard of any material caving on the northeast corner until Mr. Barton mentioned it just now and I assume if there had been any it was immaterial. Of course any bank along the river is liable to drop in.

"Q. From your investigation and the best information obtainable, this tract of 1,200 acres

known as the Trigg tract, was there just prior to the cut-off?

"A. Yes; that is a matter of history in Shelby and Tipton Counties, and it is impossible for anybody to dispute it.

"Q. Was it a matter of general reputation and common knowledge?

"A. Yes, I talked, I suppose, to a hundred people who saw the cut-off take it away. It is found in the records of the court of Tennessee, commonly known to everybody.

"Q. This sketch that you have prepared shows a line marked "JJ" in green. What is that supposed to represent?

"A. That line "JJ" is the line that Mr. C. A. Stockley pointed out as being the tentative boundary line, I believe he stated that Mr. Barton showed him. The southern end of it is fixed at where I saw the stake a few days before I made this sketch. I happened to be up there on my sister's plantation and saw the stake.

"Q. If that tentative line were to be established as the boundary line, as having been the middle of the channel of the river prior to 1876, I will ask you whether or not it would take out of the State of Tennessee and put into the State of Arkansas a large part of the land of the Trigg tract which was in actual existence at the time of the cut-off?

"A. It certainly would, and not only that, it would put in the middle of the river in 1876 the beginning point of the northwest corner of the Benton tract that Maj. Humphreys found there in 1901, and which he began his survey from, because the termination of the tentative boundary line at that point cannot be more than half a mile or a little better than Maj. Humphreys' beginning point. On this map, and also on the Humphreys map, there is a tract of land marked 'Jesse Benton's 1,436¼-acre grant.' You will recall Jesse Benton was the man Andrew Jackson fought a pistol duel with. Maj. Humphreys ran his surveys in 1899 and 1901, and that point was there at that time. It was there in 1899 when he made his first survey, and he started from it; and it was there in 1901 when he made the second survey. It was far from the river bank. You will notice the boundary line; the termination of this green line is almost due north, a little to the east, and cannot be over half a mile from the beginning point.

"Mr. Barton: You found the northwest corner of the Benton tract?

"A. I didn't find it. Major Humphreys found it in 1899 and 1901, when he made the survey.

"Q. They have the river in 1876 running over a point that was fixed as land in 1901.

"A. Yes. Not only that, but the actual survey showed that 35 acres of the Trigg tract

was left on the Tennessee main shore several years after the cut-off. That fact destroys that line completely.

"Q. This would not leave any of that at all?

"A. No, sir." (Rec. pp. 221-223).

And further:

"Q. I will ask you to look on the Mississippi River Commission map, Exhibit 91 to E. J. Bentley's deposition, on which Commissioner Bailey has marked in pencil the tentative boundary line, and state if that does not correspond approximately with the line as you have it indicated in green on your sketch.

"A. Yes.

"Q. If this pencil mark made on this map which I have just indicated established the boundary, it would have the effect of transferring a large part of the land which was in actual cultivation in Tennessee prior to the cut-off into the State of Arkansas?

"A. Yes, over half of the Trigg Plantation.

"Q. It would put in the river land which was shown by the survey to have been there as late as 1901?

"A. Yes. If that line were correct, there would never have been any cut-off, for the reason that the river would have been there long before the cut-off. Look at this 1901 Missis-

sippi River Commission map and you will see thereon the east bank of Centennial Island, which was made by the cut-off. Now, down here to the south of the Huddleston or Trigg tract, on the Tennessee main shore, the east bank of the Mississippi River is shown on this map of 1901 precisely as it was before the cut-off. This east bank down there never caved after the cut-off, for the reason that the water left that part of the country. Now the east bank of Centennial Island is a little further west than this east bank of the river south of Centennial Island on the Tennessee Main shore. Of course, this map of 1901 does not indicate the curvature of the east bank of the river south of Huddleston tract before the cut-off. The proof is that there was a landing on the southwest corner of the Trigg tract before the cut-off. The river had caved nearly all of the John Jenkins tract away and had gotten so far that it touched the Trigg Plantation on the southwest, and there was a plantation landing there. Hence, if the present east bank of Centennial Island was the west bank of the Mississippi River at that point, before the cut-off, the river had met itself long before the cut-off; in other words, the cut-off must have been made years before it actually happened. It is against every natural supposition and all the facts of the case and in direct violation of all natural laws and in direct contradiction to the testimony of all the witnesses who saw the cut-off or who know anything of this section

of the country before the cut-off, to suppose that the present east bank of Centennial Island touched the Mississippi River before the cut-off. All the proof and all the traditions of the country show that the bank of the river was at least a mile east of the present east bank of Centennial Island before the cut-off."

(Rec. pp. 217, 218, 221-223 and 224).

Witnesses who were thoroughly familiar with the Trigg 1,000-acre tract, who had been over it, and knew its size, several of whom were eye-witnesses to the cut-off, make it clear almost beyond reasonable doubt that this tract at the time of the cut-off contained in excess of twelve hundred acres, of which about three hundred acres were accretions, and that the boundary line recommended by the Commission was so far west of the eastern boundary of this tract as it existed prior to the cut-off as to make it impossible that said line could have represented any part of the navigable channel of the river.

Mr. L. E. Patton, a witness for the plaintiff, testified that on the part of this tract which bounded on McKenzie Chute the accretions amounted to several hundred acres and had a good growth of timber on it, and that a large tract was in cultivation at the time of the cut-off, and that the cut-off went directly through this tract, leaving a portion of it on the Tennessee shore and a larger tract north of the cut-off as a part of the newly formed Centennial Island. (Rec. p. 206).

Mr. A. C. Edmonds, who was called as a witness by the Commission, testified as follows:

"Q. How many times do you suppose you were on this Trigg Plantation prior to 1876?

"A. I could not tell you; I was there from the time I was big enough to run around until the cut-off.

"Q. That land just before the cut-off amounted to at least 1,000 or 1,200 acres in cultivation, did it not?

"A. Yes, sir.

"Q. Mr. Edmonds, if the river ran along this point on the map of 1891, where this pencil mark is, on Exhibit ..... to the deposition of Bentley—I refer to the pencil mark made by Commissioner Bailey—if that is where the river is placed prior to 1876, it would be right on land that was in actual cultivation, to your personal knowledge?

"A. Yes, sir.

"Q. Prior to 1876?

"A. Yes, sir.

"Q. If that were made the boundary, it would take from this Trigg tract of land that was in cultivation prior to 1876 a very large part of it that was in cultivation at that time, and put it over in Arkansas?

"A. Yes, sir.

"Q. If we make that the boundary and this is where the river was in 1876, it would put the river on cultivated land, would it not?

"A. Yes.

"Q. You are not speaking from hearsay, but from your personal knowledge of the fact that there were 1,000 or 1,200 acres in cultivation in this Trigg tract just prior to the cut-off?

"A. Yes, sir." (Rec. pp. 209,210).

And further:

"Q. The caving was very extensive after this cut-off, was it not, and it made the river very wide?

"A. Yes, sir.

"Q. You think the caving about which Commissioner Barton has asked you took place after the Centennial cut-off?

"A. Yes.

"Q. And that there were accretions on the north side of this Trigg tract from McKenzie Chute prior to the cut-off?

"A. Yes, sir." (Rec. pp. 210, 211).

Mr. C. A. Stockley had known this place all of his life and was an eye-witness to the cut-off, and testified as follows:

"Q. How much of what is known as the Trigg Place was in cultivation just prior to the cut-off?

"A. I think, between 1,000 and 1,200 acres.

"Q. Is it not a fact that after the cut-off a small part of the Trigg or Huddleston tract —about 35 acres—remained on the Tennessee main shore and a tract of about three hundred and five (305) acres remained on the east side of Centennial Island?

"A. Yes, by Mr. Burke's survey.

"Q. State whether there was not, just immediately after the cut-off a small portion—after the river had widened over a mile—about 35 acres of the Trigg or Huddleston tract left on the Tennessee main shore and a tract of about 305 acres remained on the east end of Centennial Island?

"A. That is a fact.

"Q. Those two pieces were more than a mile apart?

"A. I think so; they were at least a mile apart, or more.

"Q. So that the cut-off took away all between those two pieces of the Trigg tract?

"A. Yes, sir.

"Q. And just immediately before the cut-off there was in cultivation between a thousand and twelve hundred acres?

"A. Yes.

"Q. That you know?

"A. Yes, sir.

"Q. Were you shown what was supposed to be a tentative line by the Commissioners?

"A. I think so.

"Q. Now I will ask you in regard to the tentative line that was shown you as being the middle of the channel of the river prior to 1876; from your examination of the map and your knowledge of the fact that 1,200 acres of the Trigg or Huddleston tract were in cultivation before the cut-off, state whether that tentative line did not take in a large part of this land.

"A. Is this the tentative line?

"Mr. Barton: What he means is the line that Mr. Wilkes had on the ground when we were up there this summer.

"Witness: The last survey?

"Mr. Barton: Yes.

"Witness: Ask that question again.

"Q. State whether this tentative boundary, which was furnished you or given you by one of the commissioners as being the center of the channel of the river as it existed prior to 1876, did not fall on a part of that land that was in cultivation?

"A. Yes, it went right through that Trigg Place.

"Q. Commissioner Bailey has pointed out on the map published by the Mississippi River Commission in 1891, by pencil mark, the boundary line—tentative boundary line—which has been surveyed. I will ask if that boundary line does not go right through the Trigg or Huddleston tract?

"A. Yes, I think it does. This is the Huddleston tract in here, and the line they run goes right through there.

"Q. Was the Mississippi River prior to 1876—the channel of commerce—along that line or not?

"A. No, sir." (Rec. pp. 196, 197).

And further:

"Q. After you testified in the former hearing and after you had been furnished by the Commission with this tentative boundary line, did you indicate the facts to Mr. McSpadden—did you talk with him in regard to it and give him the benefit of this tentative line?

"A. Yes.

"Q. Mr. McSpadden, by reason of his long connection with the cases in which this question has been involved and the change of the river in 1876, is thoroughly familiar with the situation, is he not?

"A. Yes, sir.

"Q. Did he get up a rough sketch showing the situation prior to 1876?

"A. Yes.

"Q. I will ask you—I am referring to it now—whether or not the green on this sketch was, roughly speaking, the tentative boundary line that was given to you by a member of the Commission?

"A. Yes.

"Q. And that corresponds somewhat with the pencil line which was made by Commissioner Bailey on this map, published by the River Commission in '91, Exhibit A to Bentley's deposition?

"A. Yes, that is about right.

"Q. Were you given by a member of the Commission a rough pencil sketch of this?

"A. Yes.

"Q. And on that you gave the information to Mr. McSpadden and then he drew up the sketch showing the physical condition just as it existed prior to 1876?

"A. Yes." (Rec. pp. 199, 120).

Mr. J. P. Walt, whose mother was the daughter of Green Bateman and one of the heirs to what is known as the Bateman tract of 155 acres, which lies immediately east of the Huddleston grant, the

east 1,000 acres of which constituted the Trigg tract, and who was very familiar with this Trigg Plantation, having lived in that vicinity up to 1868, and who afterwards visited his relatives, and in doing so passed through the Trigg Plantation, stated that, as far back as 1868, the Trigg tract, in his opinion, contained 1,000 acres. (Rec. p. 225).

EYE-WITNESSES SAW THE BATEMAN TRACT OF 155 ACRES WHICH WAS EAST OF THE TRIGG TRACT WASHED AWAY BY THE CUT-OFF

From the testimony of Matt Sanders we quote:

"Q. Where do you live?

"A. Corona—Island 37.

"Q. How long have you lived in that neighborhood?

"A. Born there in 1851.

"Q. Do you know the Trigg property?

"A. Yes, sir; I was born on the Trigg Plantation.

"Q. Were you living around there from the time you were born until 1876, when the cut-off took place?

"A. Yes, sir. I was making a crop there. I made a crop in 1875, and it washed away before I got it picked out.

"Q. Just before this cut-off was the Trigg Plantation there just as it had been before the cut-off?

"A. Yes, sir.

"Q. Had there been any caving on the east side to amount to anything?

"A. No, sir; it never caved any until the cut-off went through?

"Q. The cut-off took it away?

"A. The cut-off taken all of it.

"Q. How big a plantation would you say that was?

"A. Looked like about 1,500 or 2,000 acres just to look at it.

"Q. You say there had been no caving to amount to anything on the east side of that plantation?

"A. No, sir.

"Q. You were there at the time of the cut-off?

"A. Yes, sir; I was living right there, had to move back in the woods, down west.

"Q. The plantation, substantially like it had been, was there at the time the cut-off took place?

"A. Yes, sir; the whole thing was there.

"Q. You say you had to move out?

"A. The whole thing had to move out from east to west of it.

"Q. It caved very rapidly after the cut-off?"

"A. Yes, sir.

"Q. Did it take in the Massey place afterwards?

"A. The Massey place went off about a year after that, it caved off slow.

"Q. Didn't take it all at first?

"A. No, sir. It took the Bateman place, the Brown place and the Trigg place.

"Mr. Barton: Who owned the Brown place?

"A. Massey owned it, but the first name was the Brown place. They were working that land before the cut-off went through.

"Q. You have no interest in this matter at all?

"A. Not a bit." (Rec. pp. 227 and 228).

The Brown place is west of Mrs. Stockley's 500 acres, while the Bateman tract was on the river immediately east of the Trigg one-thousand-acre tract. See Humphreys' map, exhibit to defendant's answer, original record page 51, and map, page 7 of Supplemental Report.

Captain O. K. Jopkin, who witnessed the cut-off, testified:

"Q. Here is marked a tract of land called the Bateman 155 acres land. I will ask you if that was still there prior to the cut-off?

"A. Yes, sir; I used to get off there to visit a girl.

"Q. Was this land there washed up by the cut-off?

"A. Yes, there were two farms destroyed by the cut-off in here.

"Q. Can you point out on this map where this land was?

"A. This place here at that time was known as the Trigg property, then as the river receded south it carried off here what was known as the Red Brown property, and it took a great deal of Mrs. Stockley's land; there was about twelve or fourteen hundred acres destroyed in about three or four days. (Rec. p. 271).

"Q. Did you see any negro houses or other buildings or—in the river?

"A. Yes; I saw all the old Trigg quarters go in the river.

"Q. Just tell what you saw in that particular.

"A. Well, the darkies were all there in great trouble trying to get their plunder out and we saw a great many amusing as well as sad things. You would see a darky pick up some of his plunder, such as a bedtick, and run off and lay it down about a hundred yards and run back for something else, but before he could get it out of the house he would have to run and the house would go in with all his stuff, and before he could get back to what he had laid down, maybe that would go in and he would be in a fix. The darkies were all in great excitement and running about like something wild trying to save their plunder. They lost most of their stuff and in some instances barely saved the children. It was a terrible sight.

"Q. Did the land cave in such large pieces that you could see it?

"A. Why, whole acres went in at a time.

"Q. You could see it, then?

"A. Yes; I could both see it and hear it; it made a great noise.

"Q. Did you have sufficient knowledge of the Trigg place to make an estimate of the number of acres of land that went into the river?

"A. We called it twelve hundred acres; eleven or twelve-hundred-acre farm; it all went in except about a hundred or hundred and fifty."

(Rec. pp. 273, 274).

H. W. Stockley testified:

"Q. Had any of it been cultivated, how much land on the Trigg place was in cultivation?

"A. Before the cut-off at least a thousand acres.

"Q. What became of that land?

"A. It was all washed away except about a hundred acres of cleared land was left.

"Q. Did it go into the river at the time of the cut-off?

"A. It all went in at once, in about three days.

"Q. Were you in the neighborhood at the time of the cut-off?

"A. Yes, sir.

"Q. Tell the Court what you saw of the cut-off.

"A. The cut-off went through in March, 1876. The night it occurred I had spent with some friends near Thomas Landing, up the river from where the cut-off made. I did not know of it, and early the next morning I started home down the river in a dug-out. I noticed the water had fallen considerably, which surprised me, as I had been under the impression that the river was rising. As I got down the river I saw a crowd of people waving and gesticulating at me. I pulled into the shore to see what they wanted, and found they had called me in to keep me from being sucked into the cut-off. I then saw that it had gone through.

"Q. Describe its appearance.

"A. Then it was between 200 and 300 yards wide and you could see the land.

"Q. Is that the place you own on the east end of Centennial Island now?

"A. It is.

"Q. How far was it from the old levee on the Trigg place as shown on this map to the Chute of 37 just before the cut-off?

"A. At least one mile.

"Q. What was the nature of the bank along Trigg's north line all along in the Chute of 37 before the cut-off? Was it a caving bank?

"A. No, it was a sand bar along there. There was a wide sand bar all along there in the chute from the main river down to my mother's place. There came a large tract of woods land before you cross the levee into the field on the Trigg place.

"Q. Did the Chute of 37 lie up against the high bank of Island 37 where it does now at the time of and just before the cut-off?

"A. It did.

"Q. Did the river run along the present east bank of Centennial Island before the cut-off? I mean the bank along the old river here on the map, by your field?

"A. No, sir; it was at least a mile east of there. The river caved up to the present bank at the time of the cut-off."

(Rec. p. 299).

And further:

"Q. What land was directly east of the Trigg land between it and the river just before the cut-off?

"A. That was what is known as the Walt place.

"Q. Was that there just before the cut-off?

"A. Yes, it was there just before the cut-off."

(Rec. p. 300).

And further:

"Q. How much land altogether went into the river at the time of the cut-off?

"A. The first three days about fifteen hundred or two thousand acres caved into the river.

"Q. How much of the Trigg place went in?

"A. Eight or nine hundred acres.

"Q. About how wide was the river at this northeast corner of the Huddlestons?

"A. About a mile and a half wide."

(Rec. p. 300).

C. A. Stockley testified as follows:

"Q. What tract of land, if any, was there between the Trigg or Huddleston and the river on the east just prior to the cut-off?

"A. To the east of the Trigg?

"Q. Yes, between that place and the river.

"A. There was a tract that belonged to Mrs. Walt. She was the daughter of Green Bateman, and the tract was known as the Bateman land.

"Q. Then there was a tract of land between Trigg on the east and the river just before the cut-off was there?

"A. Yes, it washed away in the cut-off or just after.

"Q. What was the nature of the bank along Trigg's north line in and along the Chute of 37, just before the cut-off?

"A. It was in woods."

(Rec. pp. 304 and 305).

Further:

"The water was rushing through at a terrific rate. The negroes were very excited and it looked like the whole country was going to be washed away. You would see large slices of land go in at one time containing whole acres. We had to keep moving back all the time. Shortly after I got there we got some cotton stalks and pieces of wood and started a fire back about 220 yards from the cut-off, as it was cold. Before it got to burning good it was caved in. All that morning it caved awfully after it got well through, but when it was about a half mile it did not cave so fast that evening. By the next morning it was the full width of the river. Then it quit caving on the Trigg place, but has caved ever since on the south bank of the Tennessee main shore. When I got home I found most all the Trigg place and the south half of my mother's place had been washed away.

"Q. Was the Trigg place the same as the Huddleston place marked here on Maj. Humphreys' map?

"A. It was.

"Q. ....

"A. There was sand bar there. It began at the main river on the east and extended down the Chute. All along there was a sand bar and mud flat.

"Q. Was it caving there along Trigg's or Huddleston's north line in the Chute before the cut-off?

"A. No, sir; there was a bar all along there in the Chute. I think the bank on the 37 side had caved some but on the Trigg side there was a sand bar.

"Q. Was the Trigg land caving on the east before the cut-off?

"A. Not to my knowledge. There was no bar there, but my recollection is that it was not a caving bank. It may have washed some, but it had not caved that I recollect of."

(Rec. p. 305).

E. W. Massey, who owned the place adjoining the Trigg tract and was present at the time of the cut-off, testified that the cut-off went directly through the Trigg place and about one thousand acres of this tract went into the river at the time of the cut-off (Rec. p. 318) and further, that the Trigg land caved in very rapidly, the caving extending west through this tract and Mrs. Stockley's place, carrying away cotton houses, cabins on the Trigg tract, the river cut-off coming half a mile wide on the very first day and continuing to grow wider for several days (Rec. pp. 317, 318 and 322).

Mrs. Narcisse Trigg, widow of W. W. Trigg, to who John Trigg conveyed the east one thousand acres of the Huddleston grant, testified:

"Q. Do you remember how much of the Trigg tract was taken out by this river?

"A. I think, about one thousand acres.

"Q. That left about something like three hundred acres?

"A. Yes, sir." (Rec. p. 409).

She further testified that all of this land was in Tipton County, Tennessee. (Rec. p. 409).

FINDINGS OF FACT BY THREE COURTS SUPPORT DEFENDANT'S CONTENTION

We have called attention to the 131-acre tract in the northeast part of the Trigg tract. This 131-acre tract, whose eastern boundary was on the river, as well as a tract of 1,050 acres, were involved in litigation in the Tennessee courts and in the Federal Court, being reported under the style of Stockley vs. Cissna, 119 Tenn. 135, and under the same style in 119 Fed. 812.

(See also State vs. Muncie Pulp, 119 Tenn. 47).

This court has held that the decisions in these cases could not have the effect of judicial determinations of the boundary line as against the plaintiff herein, which was a stranger to the record in said cases.

But we respectfully submit that this honorable Court will give proper weight to the findings of fact by such courts, especially in view of the stipulation set out on page 41 of the original record, as follows:

> "That the cut-off and the territory thereby affected is the same cut-off and territory mentioned and dealt with in the cases of Stockley vs. Cissna, 119 Fed. 812; State vs. Pulp Co., 119 Tenn. 47, and Stockley vs. Cissna, 119 Tenn. 135. It is not agreed that any of said reported cases are material to the instant controversy, but they are agreed to refer to and deal with

the same avulsion which concerns the controversy in this cause. The materiality and the effect of each of said decisions are matters to be determined by this court."

It is further agreed in Paragraph 8 of said stipulation that the State of Tennessee relied on such records not alone as judicial determinations, but as evidence of the boundary line at the particular place involved in said suits. The present record shows that practically all of the testimony before the Commission was before the courts in said cases. On page 80 of the present record will be seen the testimony offered by plaintiff's counsel from the records in said causes. On page 230 of the present record will be seen the evidence offered by defendant's counsel from the records in said causes. On page 2 of the Commissioner's report will be seen the list of twenty-two maps which had been used in the record before the Supreme Court of the State of Tennessee.

The record in this case affirmatively shows that the documentary and other proof before the Commission was practically the same as that contained in the records in the above cases, and which is also in the record before this honorable Court in the case of W. A. Cissna vs. State of Tennessee, No. 89, October Term, 1916, the decision in which awaits the final determination of this boundary case.

Moreover, at the time the Commission ran the line, which was completed in September, 1920, shown by Exhibit B (page 505 of the Record),

it states that it had before it the testimony contained in these cases with the State of Tennessee, as well as the testimony taken by the Commission on the ground (Rec. pp. 190-194), which latter certainly could not be regarded as very material.

It would appear therefore from this statement of the Commission on page 406 of the record, that at the time of the running of the line and the completion of the survey in September, 1920, that the Commission had before it just what was contained in the records in the above cases. And it further appears, as has already been seen, that the Commission determined in the fall of 1920 that the so-called Suter line was the one they would attempt to establish as the boundary line.

(Rec. pp. 370 and 405).

The Suter map is set out as a part of the opinion of the Supreme Court of Tennessee in 119 Tenn. 62, and at page 815 of 119 Fed. This report also contained the Humphreys map, showing the land in controversy in those causes, to-wit: the 1,050 acres east of Island 37 and the McKenzie Chute, and the 131-acre tract, the northeastern part of the Trigg tract.

If either of these tracts, under the principles established by this honorable Court, were found on substantially the same evidence which was presented to the Commissioners, to have been east of the boundary line recommended by the Commissioners, or to state it differently, if either of said tracts

was west of the middle of the channel of commerce, as it existed at the time of the cut-off, then the boundary line recommended by the Commission must be inaccurate.

Moreover, this honorable Court would no doubt carefully consider the findings of fact of such courts as to how much of the Trigg tract was washed away by the cut-off, and whether the 131 acres in the northeastern corner of said tract was taken away by the cut-off, because if a large part, and especially as much as one thousand acres of the Trigg tract was taken away, or if the 131 acres in the northeastern part thereof was in existence at the time of the cut-off and went into the river at that time, either of these facts would conclusively establish the inaccuracy of the boundary line which admittedly runs west of said 131-acre tract through the main body of the Trigg tract, and of course much further west of the main portion of the 1,050-acre accretion tract, which is marked in red on the Humphreys map, exhibited with defendant's answer (page 51 of the original record), and which is the same map set out on pages 60 and 155 of 119 Tennessee Reports, and page 818 of 118 Fed.

It should be borne in mind that Mr. Cissna, who was vitally interested in this boundary case (Rec. pp. 201-203), was contending in the State and Federal Courts that Stockley had no title to either of said tracts of land, and it appears that one of his theories in support of said contention was that the 131-acre tract disappeared at the time of the cut-

off, and even if Stockley or his grantors had once had title thereto they had lost it by such disappearance.

We quote from the opinion of Stockley v. Cissna:

> "It has been suggested, however, that the 131-acre tract was washed away and disappeared at the time of the Centennial Cut-off. It is true than one thousand acres of the Trigg land, which included the 131 acres, was swept away by the avulsion of 1876; but this fact does not extinguish the owner's title to said land, for, when it reappeared above the water, there was a restoration of the title and right of possession. On this subject, in the case of Stockley v. Cissna, supra, Judge Lurton said:
>
> > 'As a consequence of the changed course of the river in 1876, the submerged Trigg lands have been restored, through accretion or some other process, and are now dry land. It cannot be contended that, because the surface of this land was washed off, Trigg lost his title to said land so submerged, beyond recovery. The law is otherwise. Land lost by erosion or submergence is regained to the original owner, when by reliction or accretion the water disappears and the land emerges.' "
>
> 119 Tennessee, p. 174.

It is true that in the United States Circuit Court of Appeals, Judge Lurton, delivering the opinion

held that on account of the record containing no evidence either of the death of W. W. Trigg or that Stockley's grantors were in fact his widow and heirs, Stockley could not recover said 131-acre tract, but at the same time the court found the fact to be that:

> "There was evidence quite satisfactorily establishing the fact that this parcel, while owned by John Trigg, the second grantee in the line of title, was rapidly washed away by the river in 1876, and that it has since been restored by accretion or some other process by which the submerged land has again emerged above the water. The plaintiff claims that this parcel, as plotted on the Humphrey map, was included within the grant of 1824 to Simon Huddleston, and in the deed of Huddleston to John Trigg of the 1,500 acres, forming the eastern end of the Huddleston grant. Speaking of this 131-acre tract, the court below said:
>
> > 'Wholly on the bank as that was, and wholly above the low water mark as it was in its original form, the plaintiff would be entitled to recover that 131 acres down to the low water mark of 1876, when it was hid away by the flood of the cut-off of that year, if he had not failed to show title by deraignment.' " etc.
>
> "Plaintiff did deraign title down to John Trigg, who was in possession of the premises at the time of the flood of 1876. His trouble

is to show how he has acquired the Jonn Trigg title. A paper purporting to be a copy of the will of John Trigg, giving the 1,500 acres of the Huddleston grant owned by him to his son, W. W. Trigg, was put in evidence."

119 Fed. 823, 824.

From the Court's findings of fact we further quote:

"The Centennial Island tract, of 131 acres, is indicated by the lines marking off a tract of 131 acres on northwest corner of Centennial Island. This is claimed by the plaintiff to have been upland included within the lines of deeds under which he holds his Centennial Island lands, and that it was washed away by the river when its new channel was formed, and has been since restored by accretion. This Centennial Island tract is by the evidence indisputably shown to be included within the boundaries of a 2,000-acre grant to Simon Huddleston."

119 Fed. 819.

Further:

"This 131-acre parcel is not an accretion to the 305-acre tract conveyed by Allen to Stockley, inasmuch as it is but a restoration of a part of the 1,500 acres conveyed by Huddleston to John Trigg, which was washed away as a first effect of the Centennial Cut-off."

119 Fed. 827.

In its findings of fact, the Court set out one of the decrees of the Chancery Court of Shelby County, Tennessee, entered December 4, 1879, in the case of Nelson v. Trigg, reciting the purchase by Sledge, McKay & Co., and vesting title in them, of two certain tracts of land in Tipton County, Tennessee, one containing 33.75 acres of land and the other 305.75 acres of land, belonging to the estate of John Trigg, deceased, sold under the former decrees of said Court, described as follows: "Portions of a certain tract of about 1,300 acres of land situated in Tipton County, Tennessee, which has been surveyed by C. C. Burke, who reports that the Centennial Cut-off has placed nearly 1,000 acres under the X of the Mississippi River, and which is in Range 9, Section 5, on said river; the said cut-off leaving 33.75 acres on the mainland and 305.75 acres on the island."

119 Fed., I. B. 819.

This decision was rendered in 1902. The opinion in Stockley v. Cissna, 119 Tenn., supra, was rendered in 1907. In this case the Supreme Court of Tennessee held that the defect which the Circuit Court of Appeals found in the deraignment of title from W. W. Trigg, had been supplied and he was, therefore, entitled to recover the same as the widow and heirs of W. W. Trigg, who had been in possession of this 151-acre tract up to the time of the cut-off, had validly conveyed same to Stockley. We quote from said opinion:

> "As held by the United States Circuit Court of Appeals in Stockley v. Cissna, supra: 'This

131-acre parcel is not an accretion to the 305-acre tract acquired by Stockley by deed from Allen, inasmuch as it is a restoration of a part of the 1,500 acres conveyed by Huddleston to John Trigg, which was washed away as a first effect of the Centennial Cut-off.' It appears from the record that this parcel of land while owned by John Trigg, the second grantee in the deraignment of title, was suddenly swept away by the formation of the new channel in 1876, and that since that time this submerged land has again appeared above the water. It is shown that in the ejectment suit in the United States Court plaintiff deraigned title to this tract of 131 acres down to John Trigg, who was in possession of the premises at the date of the avulsion in 1876. The Federal Court held that complainant had failed to show a divestiture of title to this land out of John Trigg, or otherwise how he had acquired the John Trigg title. But it does appear that John Trigg died about the year 1865, and devised this land to his son, W. W. Trigg, who remained in possession until his death, about the year 1871 or 1872. He left surviving him his wife, one son, and one daughter. It appears the widow and heirs were in possession until after the cut-off. It is shown that by the cut-off about one thousand acres of the land, including the 131-acre tract, was washed away."

119 Tenn. 172.

And further:

> "It appears that about one thousand acres of the Huddleston tract and parts of other tracts belonging to adjacent proprietors were swept away as the result of the avulsion of the river."
>
> 119 Tenn. 154.

These findings of fact by three different courts, the United States District Court at Memphis, the Circuit Court of Appeals for the Sixth Circuit, and the Supreme Court of Tennessee, are in harmony with the overwhelming testimony in the present record which shows there could not possibly have been any material caving of the eastern or northeastern portion of the Trigg tract up to the time of the cut-off and that there went into the river at the time of the cut-off one thousand acres of this Trigg tract, the river cutting through it a new course at least a mile wide, leaving a part of the tract on the main shore consisting of about 33 acres, and about 305 acres on the north side of the new channel; that there was washed away by the cut-off a 131-acre tract, above referred to, as well as the Bateman 155-acre tract, which, prior to the cut-off, lay between the Trigg tract and the river, yet the boundary line recommended by the Commissioners as representing the middle of the main navigable channel as existed prior to the cut-off, runs considerably west, not only of the Bateman tract, but of the 131-acre tract through the main body of the Trigg one-thousand-acre tract.

Moreover, the very Suter map on which the Commission relied for its running such line at this point clearly shows that there were accretions to the Trigg tract on McKenzie Chute, sometimes called Chute 37 (Rec. p. 506). This is also shown by Captain Levasseur's map, Exhibit No. 3, page 8 of Supplemental Report.

The Commission claimed that the Burke map introduced by the defendant overthrew all the testimony of the witnesses who saw about one thousand acres of the Trigg tract go into the river and the eye witnesses who saw the Bateman tract east of the Trigg tract washed away, and all the other testimony on which three courts found that one thousand acres of the Trigg tract, including the 131-acre tract in the northeastern part thereof, had been taken away by the cut-off. It is claimed by the Commission that the Burke map shows there had been a large amount caving away of the Trigg tract between 1868 and 1877, and that, according to the eastern line of the Trigg tract, which is placed on the Burke map of 1877, there was only about 934 acres in the Trigg tract in 1868, and that all of the caving between this 1868 line and the 1877 shore line, took place prior to the cut-off.

We respectfully submit that there is no sound basis for this assumption by the Commission. In the first place, Mr. Burke, in 1877, was making a survey for the purpose of ascertaining what part of the original Trigg tract remained, and he made his survey for this purpose to enable the court to sell

and vest title in purchasers of said property. His map demonstrates the truth of what he reported to the Chancery Court, according to its decrees, that one thousand acres of this plantation went into the river at the time of the cut-off. The map shows that the river ran directly through the tract, leaving a small portion on the main shore and about three hundred acres on the north part of the new channel.

The map itself shows that the river between these two tracts was about a mile wide, and in connection with the report which he made to the court, necessarily shows that there were, including accretions, about thirteen hundred acres in the tract at the time of the cut-off. It is inconceivable that this engineer would have reported to the court that one thousand acres went into the river at the time of the cut-off, the two tracts aggregating about 338 acres of the original Trigg Plantation remaining, if there had been only 934 acres at the time of the cut-off. Burke was not concerned about the accuracy of any portion of his map of 1877 except the survey of the actual portion of the Trigg tract which remained. This is shown by the fact that he puts Island 37 east instead of North of the Trigg tract.

There is nothing to show that the line representing the boundary of 1868 was intended to be accurately placed on this map, but it is certain that he intended to show that the river had cut through the main body of this tract, and in connection with his

report, which he made to the court, had taken away a thousand acres at the time of the cut-off.

The survey of 1868, showing nine hundred and thirty-four and some-odd acres, was evidently the survey of the land within the original boundaries as shown by the title deeds and did not take into consideration the accretions. This survey of 1868 showed, therefore, that not more than about sixty acres of the original 1,000-acre tract were lost by caving. It is only on this assumption that the survey of 1868 and the survey of 1877, inconnection with his report to the court, can be reconciled, and this is in harmony with all the other evidence that shows that from two to three hundred acres had been added to the one-thousand-acre tract by accretions. His survey of 1877 and his report to the court showed the same fact. Otherwise, the report on which the court based its decrees and made deeds to purchasers, reciting that one thousand acres of the original tract had gone into the Mississippi River and that there remained after the cut-off the two tracts aggregating about 338 acres, could not have been made. The original Burke map as actually submitted to the court is found on page 3 of the supplemental report of the commissioners. The map as altered by lines placed thereon by the Commission is found on page 509 of the record. There is no authority for the yellow pencil line placed thereon by the Commissioners, purporting to indicate the boundary of 1823 or for the Arkansas-Tennessee boundary line. There are no lines of longitude or latitude on said Burke map,

and said alleged boundary line could not have been accurately transferred to this map.

We further call attention to the fact that the will of John Trigg made in 1861, devising the remainder of his tract to his son, W. W. Trigg, describes it as his plantation in Tipton County, Tennessee, containing thirteen hundred acres, more or less (Rec. p. 416). At that time the original title deeds recited that said tract contained only one thousand acres, showing that the owner considered that the three hundred acres had been added by accretions.

Exceptions XII-a and XII.

These relate to the findings of the Commission that the Burke map overthrew all other testimony as to the fact that there had been no considerable erosions on the north and northeast of the Trigg tract, and that at the time of the cut-off it contained between twelve and thirteen hundred acres of land, including the accretions to the tract lying on McKenzie Chute, and to the finding and conclusion of the Commission that "there could have been no caving along the east end of Centennial Island during the process of the cut-off or the period of readjustment," and further, that the present shore line at the east end of Centennial Island was assumed prior to the cut-off.

We have already presented under our argument of Exception No. 4 our contentions with reference to these findings which are controverted by the Suter map itself, Government Survey Sheet No. 7,

Exhibit E, showing the nature of the bank, the northeast boundary of the Trigg tract, the accretions to this part of said tract; that at the time of the cut-off all of the water in the channel of the river north of McKenzie Chute and all of the water in McKenzie Chute was necessarily drawn to the cut-off with great force and velocity and caused a rapid caving along the northeast portion of said tract and that the cut-off itself went directly through this tract and, according to the testimony of eye-witnesses, as well as the report Burke made to the Clerk of the Chancery Court of Shelby County, Tennessee, took away at least one thousand acres of this tract; that the testimony of eye-witnesses further showed that the 131-acre tract, the northeastern part of the Trigg tract, and the Bateman tract of 155 acres east of said Trigg tract, were in existence at the time of the cut-off and that, instead of its being true that the present east shore line of Centennial Island was assumed prior to the cut-off, the river was practically a mile east of the present shore line of Centennial Island and that a boundary line established on such a theory is not only uncertain but unsupported by credible evidence.

Exception XIII

This exception relates to the action of the Commission in establishing as a part of the boundary

line represented between AA and A1 on Exhibit B (Rec. p. 505), said line being contrary to the decree of reference, paragraph 3, requiring that the boundary line at all points be located according to the middle of the main navigable channel as it existed at the time the current ceased to flow therein as a result of the avulsion.

We feel that the argument already made covers the remaining exceptions. We respectfully submit that the Commission was directed to present with its report all the evidence considered by it in reaching a conclusion to the end that your Honors might determine whether such evidence was sufficient to enable the Commission, after a lapse of fifty years, to decide that the middle of the main navigable channel as it existed prior to the cut-off, could be established with reasonable certainty and to delineate same. We submit that the record now presented to your Honors shows that this could not be done, and that therefore the Commission should have reported in accordance with paragraph 5 of the interlocutory decree.

Defendant earnestly insists that the boundary line as recommended by the Commission was based on wholly inadequate data and that the overwhelming evidence shows that such a line would place in the State of Arkansas lands which were a part of the County of Tipton in the State of Tennessee.

Defendant prays therefore that its exceptions be adjudged well taken and the report of the Commission be not confirmed.

Respectfully submitted,

FRANK M. THOMPSON,
Attorney General.

G. T. FITZHUGH,
Counsel.

REPLY TO MOTION OF PLAINTIFF TO TAX DEFENDANT WITH THE COST OF PRINTING REPORT

Defendant respectfully protests that plaintiff's characterization of defendant's exceptions as being frivolous is unwarranted and that there is no basis for the claim that this defendant should be taxed with the entire cost of printing the report. Exceptions filed by defendant were not only in good faith but believed by it to be sound and supported by the great weight of the proof, both documentary and oral.

Said exceptions are grounded in the conviction that the boundary line as recommended by the Commission would deprive this defendant of its just rights. Irrespective of which state has been successful in boundary suits it has been the practically uniform rule of this honorable Court to divide the costs equally between the two states.

North Carolina v. Tenn., 235 U. S. 1.
North Carolina v. Tenn., 240 U. S. 652.
Minnesota v. Wisconsin, 252 U. S. 273.
Arkansas v. Miss., 256 U. S. 28.

Respectfully submitted,

FRANK M. THOMPSON,
Attorney General of Tennessee.

G. T. FITZHUGH,
Counsel.